



NATIONAL AIR
TRANSPORTATION
ASSOCIATION

4226 King Street
Alexandria, Virginia 22302
(703) 845-9000 FAX (703) 845-8176

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Docket Management System
U.S. Department of Transportation
400 Seventh Street, SW
Room 401
Washington, DC 20590-0001

**Re: Follow-up Comments on Docket No. FAA-2001-10047; Notice No. 01-08,
Regulation of Fractional Aircraft Ownership Programs and On-Demand
Operations**

The National Air Transportation Association (NATA) is the public policy group representing the interests of aviation businesses before Congress and the federal agencies. NATA's 2,000 member companies own, manage, operate, and service aircraft. These companies provide aviation services and products such as fuel sales, aircraft maintenance, storage, rental, parts sales, aircraft management, airline servicing, flight training, fractional ownership program management, Part 135 on-demand air charter, and scheduled commuter operations in smaller aircraft. NATA members are the vital link in the aviation industry that provides services to aircraft owners, airlines, general aviation, the military, and the general public.

The NATA Fractional Aircraft Business Council (FABC) represents the interests of fractional ownership programs, managers of those programs, and other companies with an interest in fractional ownership. It is composed of representatives from virtually all of the national fractional ownership programs, including United Biz Jet Holdings' Avolar program; Boeing NetJets® managed by BNJ NetJets® LLC; CitationShares, managed by TAG Aviation; Bombardier Aerospace's FlexJets program; Flight Options, managed by Flight Options, Inc.; HeliFlite Shares, managed by HeliFlite Shares LLC; NetJets®, managed by Executive Jet Aviation, Inc. and Executive Jet International, Inc.; PlaneSense, managed by Alpha Flying, Inc.; Raytheon Aircraft Company's Raytheon Travel

Air program, and Sikorsky and the Associated Aircraft Group, Inc.'s Sikorsky Shares program.

The NATA Air Charter Committee (ACC) represents the interests of aviation businesses providing air charter services. NATA members serve a variety of transportation needs by offering air ambulance, air cargo, air tour and business and personal transportation services. The ACC is composed of representatives from over forty-five companies that either provide air charter services or are associated with the air charter industry.

On November 16, 2001, NATA submitted comprehensive comments regarding the proposed regulation of fractional ownership and changes to certain on-demand Part 135 air charter regulations. Those comments reflected the opinion of NATA on these proposed regulations and were developed with the input of both the FABC and the ACC. The following comments are intended as a supplement to that submission to address certain issues raised by other comments submitted to the docket. These comments, like the November 16, 2001 comments, are submitted on behalf of both the FABC and the ACC.

SUPPORT OF THE RULE

NATA restates its strong support of the proposed rule and believes that the rule represents an excellent approach to regulating aircraft fractional ownership programs, program managers, fractional owners, and aircraft operations by fractional owners and program managers. NATA also believes existing fractional ownership programs deserve praise for agreeing to be governed by substantial new safety regulations and to having program managers directly regulated by the FAA for the first time. NATA believes that the fractional ownership programs' willingness to voluntarily "raise the bar" of safety regulation will result in a significant advancement in safety and further demonstrates the industry's commitment to safety.

It bears noting that the proposed regulation creates standards for fractional programs where none exist today. As just one example, there are **no** flight, duty or rest requirements for crewmembers under current Part 91 regulations. Through proposed

Subpart K, the industry has indicated its willingness to address concerns about fatigue by voluntarily adopting hard limits for crewmember duty and requiring minimum rest following a flight assignment.

NATA’S POSITION ON FRACTIONAL OWNERSHIP

NATA is especially concerned that several commenters have misinterpreted NATA’s historical position with regard to the proper regulation of fractional ownership programs. Contrary to the belief expressed in certain comments, NATA has at no time stated a position that fractional ownership programs should be regulated under Part 135.

To set the record straight, in November 1998, NATA’s Board of Directors outlined the Association’s position in a letter to the NATA Air Charter Committee members by stating the Board’s hope that a non-regulatory solution could be reached that would address concerns related to fractional programs. The Board then directed NATA staff to participate in an industry forum that would work toward developing voluntary guidelines for the operation of fractional programs. NATA later also participated in the Fractional Ownership Aviation Rulemaking Committee. Finally, NATA formed the FABC, which has consistently supported the regulation of fractional ownership programs under Part 91.

COMPOSITION OF THE FOARC

Several comments object to the composition of the Fractional Ownership Aviation Rulemaking Committee (FOARC), for several reasons. Objections that certain classes of people were excluded from the group and that the public was not adequately informed about the FOARC were frequently mentioned in such comments. NATA notes that the formation of the FOARC was announced in the *Federal Register* and that anyone wishing to participate as a member of FOARC was eligible to apply to the FAA for membership. Also, to ensure opportunity for full public participation, public meetings were scheduled and announced in the *Federal Register*. Interestingly, there were very few participants at the public meetings. At the public meetings, no presentations from pilot groups, community or environmental groups expressing either substantive suggestions or concerns about the FOARC, its mission, or its composition were given. Finally, those

who were not members of FOARC and failed to attend the public meetings have the opportunity to influence the rulemaking during the NPRM comment period. Based upon this information, NATA believes that there has been ample opportunity for public input from all interested parties.

NATA also is concerned about the suggestion of some that the recommendations of FOARC were reached through back-room deal making. The FOARC was established by the FAA in accordance with governing law so that the FAA could benefit from the collective views of a group of government and industry experts. That is what occurred, and in NATA's view, the result is an exceptionally strong proposal from both a technical and policy perspective. Moreover, the suggestion of back-room deal making ignores the public input opportunities and the fact that representatives of the FAA and DOT were present at all meetings of the FOARC. NATA believes that if any such improper dealing had occurred during the FOARC process, the FAA and DOT representatives would have addressed it on the spot. In addition, had there been any hint of back-room deal making, it is virtually certain that the NPRM under consideration would not have been accepted almost without change, nor would it have been so strongly endorsed within the government.

NEED FOR DISPATCHERS

Several comments called on the FAA to require certificated dispatchers for fractional ownership programs. While safety is often touted as a justification for this suggestion, fractional ownership programs have experienced a laudable safety record, as noted in the NPRM preamble, without the required use of certificated dispatchers. The imposition of a certificated dispatcher requirement would add no safety benefit, but would be quite burdensome. Also, the provisions of Subpart K would apply to all operations regardless of size. Comments calling for dispatch requirements fail to consider that many fractional programs entering the market in the future likely will be small businesses, for which a dispatch requirement would be even less appropriate and more burdensome.

Two recent accidents were cited in the comments as justification for a dispatch requirement. Neither of these accidents involved either fractionally-owned aircraft or fractional ownership operations. In addition, there has been no determination that the lack of certificated dispatchers had anything to do with these accidents.

ENVIRONMENTAL OBJECTIONS

Some comments called on the FAA to study the potential environmental impact of the growth of fractional ownership programs and of the proposed rule. These comments all appear to relate to one particularly noise sensitive community, and are all equally lacking in merit.

The FAA already has considered this issue and has properly determined that it is not obligated to undertake an environmental assessment or prepare an environmental impact statement concerning the proposed rule. As the FAA noted in the preamble to the proposed rule, certain FAA actions are categorically excluded from the requirement to prepare such an assessment or statement, including cases like the present one where the FAA is only acting to promulgate safety regulations and their implementation is not likely to cause a significant impact on the human environment. 66 Fed. Reg. at 37538 (citing FAA Order 1050.1D, appendix 4, ¶ 4(j)).

NATA agrees entirely with the FAA's conclusion on this point. The FAA cannot reasonably be viewed as legally obligated to conduct an environmental study dealing with the growth of fractional ownership programs because the historical and likely future growth of such programs has not been, and will not be, a product of any regulatory action. In fact, the issuance of the rule likely will have virtually no effect on the level of operations by aircraft in fractional ownership programs, since the rule was drafted to reflect the practices of the current fractional ownership program operations. Rather, the growth of fractional ownership programs over the past two decades has been, and will continue to be, attributable primarily to American-style business innovation, changes in the economy, and increases in the perceived benefits of traveling by private aircraft.

Furthermore, insofar as it may affect future Part 135 operations, it is readily apparent that the proposed rule is not likely to have a significant negative impact on the human environment. As in the case of fractional ownership programs, the growth of Part 135 operations is not so much the result of FAA regulatory actions as it is the customers' response to the services offered by Part 135 operators.

Even if the fear expressed in the comments is correct and promulgation of the proposed rule results in greater use of smaller airports by Part 135 operators (e.g., due to a change in the minimum runway length requirement), any such effect is not likely to have a significant adverse impact on the environment. Indeed, any such change in Part 135 operations should have an overall positive effect on the environment because it would reflect a more efficient allocation of aircraft activity among the larger and smaller airports around the country, resulting in less airspace congestion and related environmental harms.

FLIGHT, DUTY AND REST REGULATIONS

The FAA has a long-standing and successful practice of regulating an operation based on whether it is private or commercial, on the size of the aircraft, and on several other factors. NATA believes that rules reflecting the passenger risk involved, the aircraft used, and the type of operation, are appropriate and have led to an excellent aviation safety record. NATA believes that a one-size-fits-all flight, duty, and rest regulation would be overly burdensome and would not increase the level of safety.

The FAA has worked on revisions to the Part 121 and 135 flight, duty and rest rules for commercial aviation operations for many years. The FOARC participants were aware of this and specifically explained that it was not their intention to draft rules for fractional ownership program operations that would impact the flight, duty and rest rules for commercial aviation. The recommendations developed by FOARC over many hours of effort were designed to strike a balance between the goals of preventing abuse by a program manager and avoiding an unnecessary burden on fractional ownership program operations.

Since fractional ownership operations are private aircraft operations, it would not be appropriate to hold these operations to the same flight and duty-time regulations under which commercial aviation operations operate. Instead of simply blindly following either Part 91, Part 135, or Part 121 flight, duty, and rest requirements, FOARC developed requirements specifically tailored for fractional ownership program operations. In some instances the proposed Subpart K rules even exceed Part 121 requirements. A good example is the rest requirement. A Part 121 airline pilot is given eight hours of rest following duty, but this can be reduced by the airline in certain circumstances. FAR § 121.471(c) allows an air carrier to reduce a crewmember's rest period to a minimum of eight hours so long as compensatory rest is provided within the next 24 hours. No such reduced rest flexibility is available to the fractional program manager. The proposed Subpart K rules provide the fractional pilot with a minimum of 10 hours of rest before and after a duty assignment. The program manager cannot reduce this time under any circumstances.

OVERWATER EQUIPMENT REQUIREMENTS

NATA presented comments in our original submission supporting proposed FAR §§ 91.509 and 135.167. Following an informal review of the docket, it appears that some commenters on the NPRM misinterpreted the intent of the proposed changes to the regulations. For example, the proposed rules do not impact current requirements to carry a life preserver for each occupant. Instead, the rules recognize the superior reliability of turbine engines and preserve an appropriate margin of safety because aircraft must operate at or above 25,000 feet to forgo life raft and related equipment requirements.

SECURITY

Security issues have taken on an increased importance since the NPRM was issued by the FAA. While NATA agrees that security issues have become an industry-wide concern, NATA does not believe that this rule is the appropriate place to address security regulations. This is particularly true in light of the transfer of responsibility for aviation

security from the FAA to the Department of Transportation's Transportation Security Administration ("TSA") on February 17, 2002.

Instead, NATA would prefer an industry-wide, comprehensive examination of security issues affecting a broad range of aviation operations and believes that such an approach would facilitate a coherent approach to aviation security. This would be preferable to addressing security issues piecemeal, as would be the case if security issues were addressed in issuing this rule, which is dedicated to a particular segment of aviation.

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NATA appreciates the opportunity to provide additional comment on this rulemaking. We anticipate the final rule and look forward to working with the FAA on implementation issues that may arise.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Burnside". The signature is fluid and cursive, with the first name "Joseph" and last name "Burnside" clearly distinguishable.

Joseph E. (Jeb) Burnside
Vice President